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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CONSTRUCTION LABORERS TRUST
FUNDS FOR SOUTHERN
CALIFORNIA ADMINISTRATIVE
COMPANY, a Delaware limited liability
company,

Plaintiff,

v.

BONITA PIPELINE, INC., a California
corporation; FRANCISCO JAVIER
MARQUEZ, an individual; LAURA
ROSAS MARQUEZ, an individual;
ORTIZ CORPORATION, a California
corporation; INTERNATIONAL
FIDELITY INSURANCE COMPANY, a
New Jersey corporation; DOE 1 through
DOE 5, inclusive,

Defendants.

CASE NO.:

COMPLAINT FOR:

- 1. BREACH OF COLLECTIVE
BARGAINING AGREEMENT**
- 2. DAMAGES FOR BREACH OF
FIDUCIARY DUTIES**
- 3. FOR PRELIMINARY AND
PERMANENT INJUNCTIVE
RELIEF**
- 4. MONETARY DAMAGES
THROUGH ENFORCEMENT
OF PAYMENT BONDS**

[29 U.S.C. §§ 185, 1109, 1132(g)(2)
and 1145; 29 U.S.C. § 1132(a)(3); 29
U.S.C. § 185; 28 U.S.C. § 1367(a)]

Plaintiff, CONSTRUCTION LABORERS TRUST FUNDS FOR SOUTHERN
CALIFORNIA ADMINISTRATIVE COMPANY, a Delaware limited liability
company, ("CLTF") alleges:

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JURISDICTION AND VENUE

1 2. This action is brought by a fiduciary administrator on behalf of employee
 2 benefit plans to collect monthly fringe benefit contributions due such plans in
 3 accordance with the terms and conditions of the plans, the collective bargaining
 4 agreement between the employer and a labor organization, and pursuant to statutes, as
 5 well as for breach of fiduciary duty to the plans against the employer and its principal.
 6 This action will further seek recovery against payment bonds on public works projects
 7 for portions of the compensation in the form of contributions owed by employer to its
 8 employees payable to the plans, pursuant to State Law. This Court has jurisdiction
 9 over Claims 1 through 3 pursuant to sections 502(g)(2) and 515 of the Employee
 10 Retirement Income Security Act (ERISA) (codified at 29 U.S.C. §§ 1132(g)(2) and
 11 1145); section 502(a)(3) of ERISA (codified at 29 U.S.C. § 1132(a)(3)); and section
 12 301 of the Labor Management Relations Act (LMRA) (codified at 29 U.S.C. § 185).
 13 This Court has supplemental jurisdiction over Claim 4 pursuant to 28 U.S.C.
 14 § 1367(a) as all claims arise from a common core of transactions, and seek payment of
 15 overlapping damages. Pursuant to section 502(e)(2) of ERISA (codified at 29 U.S.C.
 16 § 1132(e)(2)), venue is proper in this district as the the employer's performance and
 17 breach took place in this district and the plans are administered in this district.
 18

PARTIES

19 2. CLTF is an administrator of, agent for collection for, a fiduciary to, and
 20 brings this action on behalf of, the following employee benefit plans: Laborers Health
 21 And Welfare Trust Fund For Southern California, Construction Laborers Vacation
 22 Trust For Southern California, Laborers Training And Re-Training Trust Fund For
 23 Southern California, Center For Contract Compliance, Laborers' Trusts
 24 Administrative Trust Fund For Southern California, San Diego County Construction
 25 Laborers Pension Trust Fund, San Diego Construction Advancement Fund 2003, and
 26 Southern California Partnership For Jobs Trust Fund (hereinafter referred to
 27
 28

1 collectively as "TRUST FUNDS"). The TRUST FUNDS are express trusts created
2 by written agreement, an employee benefit plan within the meaning of section 3(3) of
3 ERISA (29 U.S.C. § 1002(3)), and a multi-employer plan within the meaning of
4 section 3(37)(A) of ERISA (29 U.S.C. § 1002(37)(A)). Each of the TRUST FUNDS
5 exists pursuant to ERISA and section 302 of the LMRA (29 U.S.C. § 186). CLTF and
6 the TRUST FUNDS' (collectively hereinafter referred to as "Plaintiff") principal
7 places of business are in the County of Los Angeles, State of California.

8 3. CLTF is a fiduciary as to the TRUST FUNDS, in that it:

9 A. Exercises discretionary authority or discretionary control
10 respecting the collection of delinquent (or possibly delinquent) fringe
11 benefit contributions to the TRUST FUNDS, including but not limited to
12 discretion in auditing employers, deciding what claims to assert, acting as
13 agent of the TRUST FUNDS in asserting claims, waiving liquidated
14 damages, settling claims, and releasing claims; and

15 B. Exercises authority or control respecting management or
16 disposition of assets of the TRUST FUNDS, including but not limited to,
17 receiving delinquent contributions collected and holding them in a bank
18 account in its own name over which it has check-writing authority, and
19 then exercising discretion in allocating those assets among the different
20 TRUST FUNDS, different participants, different time periods and
21 different jobs.

22 4. Plaintiff is informed and believes and thereon alleges that Defendant,
23 BONITA PIPELINE, INC., ("EMPLOYER"), is a California corporation organized
24 and existing under and by virtue of the laws of the State of California and is engaged
25 in business in the State of California with its principal place of business in the City of
26 Chula Vista, County of San Diego, State of California and does, or at all relevant
27 times did, business in the State of California as a construction contractor in an
28 industry affecting interstate commerce.

1 5. Plaintiff is informed and believes, and on that basis alleges, that
2 Defendant, FRANCISCO JAVIER MARQUEZ, an individual, ("F MARQUEZ") is
3 and has been at all times mentioned herein, an individual who is engaged in business
4 in the City of Chula Vista, County of San Diego and who may also reside therein and
5 is a principal, responsible managing officer and Chief Executive Officer of the
6 EMPLOYER.

7 6. Plaintiff is informed and believes, and on that basis alleges, that
8 Defendant, LAURA ROSAS MARQUEZ, an individual ("L MARQUEZ") and has
9 been at all times mentioned herein, an individual who is engaged in business in the
10 City of Chula Vista, County of San Diego and who may also reside therein and is the
11 Secretary and Chief Financial Officer of the EMPLOYER.

12 7. Plaintiff is informed and believes and thereon alleges that ORTIZ
13 CORPORATION, ("ORTIZ") is a California corporation organized and existing
14 under and by virtue of the laws of the State of California and is and/or was engaged in
15 business in the State of California with its principal place of business in the City of
16 National City, County of San Diego, State of California and was the general
17 contractor of EMPLOYER on a public works projects for the CITY OF SAN DIEGO
18 and at all relevant times did, business in the State of California as a construction
19 contractor in an industry affecting interstate commerce.

20 8. Plaintiff is informed and believes and thereupon alleges that Defendant,
21 INTERNATIONAL FIDELITY INSURANCE COMPANY ("FIDELITY.") is a New
22 Jersey corporation, licensed and authorized to perform and transact a surety business
23 in the State of California, with its principal place of business in the City of Newark,
24 State of New Jersey.

25 9. The true names and capacities, whether individual, corporate, associate,
26 or otherwise of Defendants named herein as DOE 1 through DOE 5, inclusive are
27 unknown to Plaintiff, who therefore sue said Defendants by such fictitious names, and
28 Plaintiff will amend this Complaint to show their true names and capacities when the

1 same have been ascertained.

2 **OTHERS**

3 10. The City of San Diego ("CITY") is a public agency as defined in Cal.
4 Civ. Code § 8036. The CITY is not a party to this action.

5 11. The Southern California District Council of Laborers and its affiliated
6 Local Unions, including Local No. 89 (collectively "UNION") is, and at all relevant
7 times was, a labor organization representing employees affecting interstate commerce.
8 The UNION is not a party to this action.

9 12. The persons listed in the attached Exhibits "1", "2", "3" are or were
10 employees of EMPLOYER who performed work on projects for the CITY identified
11 on said Exhibits and in paragraphs 53 et seq., below during the periods indicated
12 therein. Said persons listed on Exhibits "1", "2" and "3" shall be hereinafter referred
13 to as "LABORERS". Each of the LABORERS is a "laborer" within the meaning of
14 Cal. Civ. Code § 8024. The LABORERS are not parties to this action.

15
16 **INDIVIDUAL DEFENDANT**

17 13. Plaintiff is informed and believes and thereon alleges that at all times
18 material herein, that F. MARQUEZ and L. MARQUEZ (collectively "F&L
19 MARQUEZ") were and/or continue to be fiduciaries and/or parties in interest to the
20 TRUST FUNDS as defined in 29 U.S.C. §§ 1002(14), and 1002(21)(A), for the
21 reasons more fully described below and in the Second Claim for Relief.

22 14. Plaintiff is informed and believes and thereon alleges that F&L
23 MARQUEZ inclusive are responsible for running the day to day operations of
24 EMPLOYER and are responsible for decisions pertaining to the reporting and
25 payment of contributions to the TRUST FUNDS, and that they personally maintained
26 control of those funds which should have been turned over to the TRUST FUNDS.

27 15. Plaintiff is informed and believes and thereon alleges that at all times
28 herein, F&L MARQUEZ are majority shareholders of EMPLOYER and/or the

1 beneficial owners of EMPLOYER.

2 16. Plaintiff is informed and believes and thereon alleges that F&L
3 MARQUEZ acted on behalf of and in the interest of EMPLOYER in all aspects of
4 labor relations and in EMPLOYER'S dealings and relations with the TRUST FUNDS,
5 and the UNION.

6 17. Plaintiff is informed and believes and thereon alleges that F&L
7 MARQUEZ inclusive acted on behalf of EMPLOYER and in the interest of
8 EMPLOYER in determining which employees EMPLOYER would report to the
9 TRUST FUNDS, the number of hours upon which contributions would be reported as
10 owing, and the amount and timing of contributions to be paid to the TRUST FUNDS.

11
12 **FIRST CLAIM FOR RELIEF**

13 **(Against the EMPLOYER for Monetary Damages**

14 **Due to Employee Benefit Plans)**

15
16 18. Plaintiff repeats and realleges and incorporates herein by reference each
17 and every allegation contained in paragraphs 1 through 17, above.

18
19 **AGREEMENTS**

20 19. EMPLOYER became bound to agreements with the UNION known as
21 the "Laborers' Public Work Project Agreement" ("PROJECT AGREEMENT") for a
22 project known as "MCTC 6 Stations (various locations)" effective on the date
23 EMPLOYER commenced work on the project covered by the PROJECT
24 AGREEMENT, and the "Laborers' Short-Form Agreement for the Construction
25 Industry" ("SHORT FORM") effective on or about March 6, 2018, which bind
26 EMPLOYER to the UNION'S Construction Master Labor Agreements for Southern
27 California and San Diego (collectively "MLA"). At all times material herein,
28 EMPLOYER has been and continues to be bound by the MLA relating to its work

1 under the PROJECT AGREEMENT through March 5, 2018 and thereafter for work
2 under the PROJECT AGREEMENT and on all other projects within the geographical
3 jurisdiction of the MLA. The MLA continues to remain in effect.

4 20. Pursuant to the PROJECT AGREEMENT, SHORT FORM and MLA,
5 EMPLOYER became obligated to all the terms and conditions of the various Trust
6 Agreements which created each of the TRUST FUNDS as they may be constituted in
7 their original form or as they may be subsequently amended. The referenced
8 Agreements will be collectively referred to as "AGREEMENTS".

9 21. The AGREEMENTS obligate EMPLOYER to pay fringe benefit
10 contributions at the rates set forth in the AGREEMENTS for each hour worked (or
11 paid for) by employees performing services covered by the AGREEMENTS
12 ("MONTHLY CONTRIBUTIONS"). The EMPLOYER is additionally required to
13 submit monthly reports with these MONTHLY CONTRIBUTIONS, detailing the
14 name, address, social security number and hours worked that month for each
15 employee covered by the AGREEMENTS and those monthly reports are required to
16 be submitted even where there are no employees to report for the reporting period.
17 The TRUST FUNDS depend on the truth and accuracy of this information, in order to
18 not only determine the correct amount of MONTHLY CONTRIBUTIONS due, but to
19 fulfill their own fiduciary duties to properly credit participants towards the benefits
20 provided by the TRUST FUNDS. Those MONTHLY CONTRIBUTIONS constitute
21 assets of the TRUST FUNDS, pursuant to the terms of the AGREEMENTS and
22 applicable law, from the time they are due and can be reasonably segregated from
23 other funds. The Trustees of the TRUST FUNDS have a fiduciary duty to marshal
24 those assets so that they may be applied for the benefit of the participants and
25 beneficiaries in accordance with the various Trust Agreements.

26 22. The AGREEMENTS obligate EMPLOYER, and any of its
27 subcontractors or lower-tiered subcontractors, to subcontract work covered under the
28 Agreements to those subcontractors who are parties to Agreements with the UNION,

1 and failure to do so will result in damages to the TRUST FUNDS and EMPLOYER
2 will be financially obligated to the TRUST FUNDS for the damages caused
3 therefrom, including amounts measured by the fringe benefit MONTHLY
4 CONTRIBUTIONS, liquidated damages, and interest that would be owed by the
5 subcontractor if signatory to the AGREEMENT.

6 23. The AGREEMENTS further provide that if EMPLOYER subcontracts
7 work to and/or if its subcontractor(s) or lower-tiered subcontractors, subcontracts
8 work covered under the AGREEMENTS to any subcontractor who is delinquent in its
9 obligations to the TRUST FUNDS under its AGREEMENTS, then EMPLOYER will
10 be financially obligated to the TRUST FUNDS for the amounts owed by said
11 delinquent subcontractor, including any fringe benefits, liquidated damages and
12 interest owed.

13 24. By the AGREEMENTS and pursuant to 29 U.S.C. § 1132(g)(2)(C),
14 EMPLOYER is obligated to pay to the TRUST FUNDS, as and for liquidated
15 damages for detriment caused by the failure of EMPLOYER to pay fringe benefit
16 MONTHLY CONTRIBUTIONS in a timely manner, a sum equal to \$25.00 or twenty
17 percent (20%) of the unpaid MONTHLY CONTRIBUTIONS or interest on the
18 unpaid MONTHLY CONTRIBUTIONS at rates established pursuant to the
19 AGREEMENTS from their respective due dates, whichever is the greater amount, for
20 each of the TRUST FUNDS to which EMPLOYER is required to contribute.

21 25. By the AGREEMENTS and pursuant to 29 U.S.C. § 1132(g)(2)(B),
22 EMPLOYER is obligated for payment of interest on delinquent MONTHLY
23 CONTRIBUTIONS from the due date of the contribution through the payment date of
24 the contribution, at the per annum rate of five percent (5%) over the rate set by the
25 Federal Reserve Board at San Francisco, California, effective on the date each
26 contribution is due.

27 26. The AGREEMENTS and ERISA provide the TRUST FUNDS with
28 specific authority to examine and copy all of EMPLOYER'S payroll and business

1 records which may be pertinent to determining whether EMPLOYER has reported all
2 hours worked (or paid for) by employees who perform services covered under the
3 AGREEMENTS and has paid the appropriate MONTHLY CONTRIBUTIONS to the
4 TRUST FUNDS, and that the EMPLOYER shall be responsible for the costs of such
5 audit.

6 **BREACH OF AGREEMENTS**

7 27. Plaintiff is informed and believes and based on such information and
8 belief alleges that EMPLOYER employed workers who performed services covered
9 by the AGREEMENTS and failed to pay the rates specified in the AGREEMENTS to
10 TRUST FUNDS on behalf of those workers for each hour worked (or paid for) by
11 employees performing services covered by the AGREEMENTS. Due to
12 EMPLOYER'S continuing obligation to submit timely accurate monthly contribution
13 reports additional amounts may be discovered and become due and owing by
14 EMPLOYER have not yet been ascertained at this time. Said amounts including
15 MONTHLY CONTRIBUTIONS, liquidated damages, subcontracting violations,
16 interest, and audit fees will be established by proof at the trial or other hearing.

17 28. All conditions to EMPLOYER'S obligations to make payments under the
18 AGREEMENTS have been met.

19 **DAMAGES**

20 29. As a result of EMPLOYER'S failure to pay the rates specified in the
21 AGREEMENTS, Plaintiff is informed and believes and thereupon alleges that there is
22 now owing and unpaid to the TRUST FUNDS from EMPLOYER, during the period
23 from November 2017 to August , damages in the sum of at least \$45,998.90 consisting
24 of \$32,173.64 in unpaid MONTHLY CONTRIBUTIONS, \$15,716.14 in liquidated
25 damages, \$1,280.00 in audit fees; and \$829.12 in interest on the late and/or unpaid
26 MONTHLY CONTRIBUTIONS owed to the TRUST FUNDS through October 18,
27 2018, plus additional accrued interest at the plan rate(s), currently 7.75% per annum,
28

1 until payment of the contribution is made, less a credit of \$4,000.00, as well as any
2 additional MONTHLY CONTRIBUTIONS, liquidated damages, subcontracting
3 violations, audit fees and interest on the additional amounts owed at the plan rate(s),
4 currently 7.75% per annum, according to proof at the time of trial or other hearing.

5 30. The failure of the EMPLOYER to pay MONTHLY CONTRIBUTIONS
6 when due causes harm to the TRUST FUNDS and its participants, which is
7 impractical to accurately quantify. This may include the cost of collecting the
8 MONTHLY CONTRIBUTIONS from the EMPLOYER or third parties (not including
9 the costs of this litigation), the cost of special processing to restore benefit credits
10 because of late MONTHLY CONTRIBUTIONS, the temporary loss of insurance
11 coverage by employees (even if later restored) and medical harm to participants and
12 beneficiaries who may have foregone medical care when notified that medical
13 insurance ceased because of their employer's failure to pay MONTHLY
14 CONTRIBUTIONS. The liquidated damages provision of the AGREEMENTS was
15 meant to compensate for this unquantifiable loss, and is based on the ratio of
16 collection costs over amounts collected, regularly reported to the Trustees. The
17 Trustees of the TRUST FUNDS have the authority, in their discretion, to waive all or
18 part of these liquidated damages. In this case, they have exercised their discretion by
19 declining to waive any liquidated damages.

20 31. It has been necessary for the TRUST FUNDS to engage counsel to bring
21 this action to compel compliance with the AGREEMENTS which provide that in the
22 event litigation is necessary with respect to any of the fringe benefit MONTHLY
23 CONTRIBUTIONS and/or damages against EMPLOYER, then EMPLOYER would
24 pay reasonable attorney's fees and all other reasonable expenses of collection,
25 including audit fees.

26 32. Under Sections 515 and 502(g) of ERISA, EMPLOYER is liable to the
27 TRUST FUNDS not only for the amount of delinquent MONTHLY
28 CONTRIBUTIONS but also (a) for pre-judgment and post-judgment interest on the

1 delinquent sums (as provided for in Section 502(g) of ERISA); (b) for the higher of
2 interest or liquidated damages (as provided for in Section 502(g) of ERISA); (c) for
3 attorneys' fees; and (d) for other relief permitted by Section 502(g) of ERISA.

4
5 **SECOND CLAIM FOR RELIEF**

6 **Damages for Breach of Fiduciary Duties in Violation of ERISA**
7 **(Against EMPLOYER and F&L MARQUEZ)**

8
9 33. Plaintiff repeats and realleges and incorporates herein by reference each
10 and every allegation contained in paragraphs 1 through 32 above.

11 34. Plaintiff is informed and believes and thereon alleges that F&L
12 MARQUEZ were and still are parties in interest, the agents, managing officers,
13 directors, managing employees, and/or beneficial owners of EMPLOYER with the
14 authority to direct, control, and/or manage the business affairs of EMPLOYER
15 including the disposition of EMPLOYER'S assets.

16 35. Plaintiff is informed and believes and thereon allege that EMPLOYER,
17 F&L MARQUEZ were and still are fiduciaries with respect to the TRUST FUNDS
18 within the meaning of § 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), in that they
19 exercised discretionary authority or control respecting management or disposition of
20 assets of the TRUST FUNDS.

21 36. The AGREEMENTS require that EMPLOYER deduct MONTHLY
22 CONTRIBUTIONS due to the CONSTRUCTION LABORERS VACATION TRUST
23 FUND FOR SOUTHERN CALIFORNIA ("VACATION FUND") from
24 EMPLOYER'S employees' weekly paychecks, in the amounts specified. Such
25 deductions are "amounts that a participant has withheld from his wages by an
26 employer, for contribution" to the TRUST FUNDS, which thus become assets of the
27 TRUST FUNDS within the meaning of 29 C.F.R. § 2510.3-102, "as of the earliest
28 date on which such contributions . . . can reasonably be segregated from the

1 employer's general assets."

2 37. On "public works" as defined by California Labor Code § 1720, the
3 EMPLOYER was required to pay a minimum "prevailing" or "per diem" wage,
4 including amounts which could either be paid directly on the weekly paycheck to
5 employees, or contributed as "employer payments" (as defined in Labor Code
6 § 1773.1) which includes payments to the TRUST FUNDS. The EMPLOYER
7 employed workers on such public works for the CITY covered by the
8 AGREEMENTS, and EMPLOYER'S certified payroll records on the CITY'S projects
9 (pursuant to Labor Code § 1776) certified the amounts being paid and withheld from
10 the employees' required prevailing wage, of which the benefit portion was required to
11 be contributed to the TRUST FUNDS in satisfaction of the prevailing wage required
12 law. The U.S. Department of Labor has taken the position that such amounts are
13 "amounts that a participant has withheld from his wages by an employer, for
14 contribution" to the TRUST FUNDS, which become assets of the TRUST FUNDS
15 within the meaning of 29 C.F.R. § 2510.3-102, "as of the earliest date on which such
16 contributions . . . can reasonably be segregated from the employer's general assets."

17 38. Plaintiff is informed and believes that, instead of turning over the
18 portions of the prevailing wage the EMPLOYER deducted from the employees'
19 weekly paychecks earmarked for payment to the TRUST FUNDS, that the
20 EMPLOYER and/or F&L MARQUEZ kept those amounts for their own use, and did
21 not segregate or turn them over to the TRUST FUNDS.

22 39. Plaintiff is informed and believes that F&L MARQUEZ are the persons
23 responsible for preparing and issuing certified payroll reports to public agencies under
24 Labor Code § 1776, and responsible for the certification that such amounts would be
25 paid to the TRUST FUNDS as part of the prevailing wage obligation. Plaintiff is
26 further informed and believes that F&L MARQUEZ had discretionary authority or
27 control over sufficient, segregable funds to pay the amounts certified under penalty of
28 perjury, that would be withheld from employees' weekly wages for contribution to the

1 TRUST FUNDS in order to meet prevailing wage obligations, including the authority
2 to write checks on the accounts in which such funds were held, but instead kept them
3 for his own use, or for the use of the EMPLOYER.

4 40. By their discretionary authority or control over the management or
5 disposition of assets of the TRUST FUNDS, specifically to VACATION FUND as
6 well as the fringe benefit component of prevailing wages on public works, described
7 above, EMPLOYER and F&L MARQUEZ are fiduciaries of the TRUST FUNDS
8 within the meaning of section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

9 41. The amount of the delinquent MONTHLY CONTRIBUTIONS
10 referenced herein above were and still are due and owing to the TRUST FUNDS and
11 are assets of the TRUST FUNDS within the meaning 29 U.S.C. §§ 1001-1003, 1021-
12 1031, 1111-1114 and 18 U.S.C. § 664. The amounts will be proven at the time of trial
13 or other hearing, plus interest at the plan rate(s).

14 42. By failing to timely account for and turn over the assets of the TRUST
15 FUNDS described above, by failing to apply such assets for the exclusive benefit of
16 participants and beneficiaries of the TRUST FUNDS, and instead using those assets
17 for their own benefit, EMPLOYER, F&L MARQUEZ breached their fiduciary duties
18 to the TRUST FUNDS within the meaning of sections 404(a)(1)(A), (B) and (D), of
19 ERISA, 29 U.S.C. §§ 1104(a)(1)(A), (B) and (D).

20 43. Plaintiff is informed and believes and thereon alleges that the acts and
21 omissions to act by EMPLOYER and F&L MARQUEZ constitute misuse,
22 misappropriation and/or conversion from employee benefit plans within the meaning
23 of 18 U.S.C. § 664 and breach of their fiduciary obligations within the meaning of 29
24 U.S.C. § 1104 through §1106.

25 44. Pursuant to § 409 of ERISA, 29 U.S.C. § 1109, F&L MARQUEZ are
26 personally liable for damages to the TRUST FUNDS, and to make good to the
27 TRUST FUNDS any losses to them resulting from each such breach of their fiduciary
28 duties, and to restore to the TRUST FUNDS any profits which have been made

1 through their use of these assets of the TRUST FUNDS. Plaintiff seeks an accounting
2 from EMPLOYER, F&L MARQUEZ of the amount and disposition of these assets.

3 45. Plaintiff requests that it be awarded its costs and reasonable attorney's
4 fees pursuant to § 502(g)(1) of ERISA, 29 U.S.C. § 1132(g)(1), and such other
5 remedies as may be available pursuant to ERISA §§ 409(a) and 502(a)(2), 29 U.S.C.
6 §§ 1109(a) and 1132(a)(2).

7
8 **THIRD CLAIM FOR RELIEF**
9 **FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**
10 **(AGAINST EMPLOYER AND F&L MARQUEZ)**
11

12 46. Plaintiff repeats, realleges, and incorporates by reference each and every
13 allegation contained in paragraphs 1 through 45, inclusive as though fully set forth
14 herein.

15 47. As part of its obligations under the AGREEMENTS, EMPLOYER is
16 required to submit monthly reports to the TRUST FUNDS indicating the names,
17 social security numbers and number of hours worked by each laborer it employed.
18 EMPLOYER is required to pay to the TRUST FUNDS, at the time the report is
19 submitted, an amount equal to the total number of laborers hours worked (or paid for),
20 multiplied by the applicable MONTHLY CONTRIBUTION rates.

21 48. EMPLOYER has failed to comply with the provisions of the
22 AGREEMENTS as follows: during time periods from March 2018 to September
23 2018, EMPLOYER failed to submit its monthly contribution reports with payment of
24 the amounts owed as required by the AGREEMENTS, and the audits of
25 EMPLOYER'S records disclosed 607 additional hours worked by employees which
26 were required to be reported and MONTHLY CONTRIBUTIONS paid to the TRUST
27 FUNDS for those hours worked and but for the audits of the EMPLOYER'S records
28 the MONTHLY CONTRIBUTIONS owed would not have been discovered by the

1 TRUST FUNDS. EMPLOYER has further required Plaintiff to seek collection of the
2 MONTHLY CONTRIBUTIONS from third parties, and but for the claims asserted for
3 the MONTHLY CONTRIBUTIONS, payment would not have been made.

4 49. By reason of the actions by EMPLOYER and F&L MARQUEZ, the
5 TRUST FUNDS have suffered and will continue to suffer extreme hardship and actual
6 and impending irreparable injury and damage in that employee beneficiaries of the
7 TRUST FUNDS acquire eligibility for health and welfare benefits and pension
8 benefits by tabulating the number of hours reported by EMPLOYER and all
9 contributing employers during each monthly period. The funds necessary to pay all
10 anticipated health and welfare claims and pension claims based upon the number of
11 hours reported to the TRUST FUNDS on behalf of individual employees. In addition,
12 the amount of benefits payable to all employees for health and welfare and pension
13 claims is actuarially determined on the basis of funds projected to be received from
14 contributing employers. The submission of monthly report forms from EMPLOYER
15 without the required payments necessarily contributes to the total potential liability of
16 the TRUST FUNDS for health and welfare and pension claims without the TRUST
17 FUNDS being able to readjust or recompute benefit levels based upon EMPLOYER'S
18 failure to pay MONTHLY CONTRIBUTIONS on a monthly basis. Further,
19 EMPLOYER'S failure to timely pay MONTHLY CONTRIBUTIONS have cause
20 substantial expense to the TRUST FUNDS in seeking payment from third parties.

21 50. Sections 502(a)(3) and 502(g)(2)(E) of ERISA, 29 U.S.C. §§ 1132(a)(3)
22 and 1132(g)(2)(E), specifically authorizes this Court to enter injunctive relief for such
23 violations of the plan and ERISA. Injunctive relief is appropriate here to require the
24 EMPLOYER to fulfill its obligations under the AGREEMENTS and ERISA.

25 51. It has been necessary for Plaintiff to engage counsel to bring this action
26 to compel compliance with the AGREEMENTS provide that in the event litigation is
27 necessary with respect to any of the MONTHLY CONTRIBUTIONS and/or damages,
28 EMPLOYER would pay reasonable attorneys' fees and all other reasonable expenses

1 of collection, including audit fees.

2
3 **FOURTH CLAIM FOR RELIEF**
4 **ENFORCEMENT OF PAYMENT BONDS**
5 **(Against ORTIZ, FIDELITY and DOE 1 THROUGH DOE 5, INCLUSIVE)**
6

7 52. Plaintiff repeats and realleges and incorporates herein by reference each
8 and every allegation contained in paragraphs 1 through 32 above.

9 53. Plaintiff is informed and believes and thereupon alleges that the CITY
10 entered into contracts with ORTIZ for the construction or repair upon works of
11 improvement for the CITY on the following projects:

12 A. A project known for the CITY known as the "Black Mountain
13 Recycled Water Tank Modification Design & Build" project ("BLACK
14 MOUNTAIN PROJECT"). ORTIZ in turn subcontracted portions of the work
15 of improvement on the BLACK MOUNTAIN PROJECT to EMPLOYER.

16 B. A project for the CITY known as the "AC Water Group 1028"
17 project ("AC WATER PROJECT"). ORTIZ in turn subcontracted portions of
18 the work of improvement on the AC WATER PROJECT to EMPLOYER.

19 C. A project for the CITY known as the "Sewer & Water Group 701"
20 project ("SEWER & WATER PROJECT"). ORTIZ in turn subcontracted
21 portions of the work of improvement on the SEWER & WATER PROJECT to
22 EMPLOYER.

23 The BLACK MOUNTAIN PROJECT, AC WATER PROJECT and SEWER &
24 WATER PROJECT will collectively hereinafter be referred to as "ORTIZ
25 PROJECTS".

26 54. Pursuant to those contract(s) and subcontract(s), LABORERS performed
27 actual labor in the construction of the works of improvement upon the ORTIZ
28 PROJECTS described herein above, expending numerous hours for which

1 EMPLOYER promised and agreed to pay wages and MONTHLY CONTRIBUTIONS
2 to and on behalf of its employees, including LABORERS listed on Exhibits "1", "2"
3 and 3" for work performed on the ORTIZ PROJECTS.

4 55. The ORTIZ PROJECTS are "public works" as defined in Cal. Labor
5 Code § 1720 and work performed on it is performed pursuant to a "public works
6 contract" as defined in Cal. Civ. Code § 8038. Pursuant to Cal. Labor Code § 1771,
7 the "general prevailing rate of per diem wages" must be paid to all workers employed
8 on the ORTIZ PROJECTS. The work of the LABORERS of EMPLOYER on the
9 ORTIZ PROJECTS are covered by the EMPLOYER'S AGREEMENTS described
10 above.

11
12 **LABOR PERFORMED ON PUBLIC PROJECT;**
13 **UNPAID COMPENSATION**

14 56. EMPLOYER employed the LABORERS on the ORTIZ PROJECTS,
15 subject to the terms and conditions of the AGREEMENTS, including the requirement
16 of MONTHLY CONTRIBUTIONS as part of their total compensation.

17 57. LABORERS' work on the ORTIZ PROJECTS was necessary for the
18 construction, alteration or repair of buildings, improvements or structures upon the
19 ORTIZ PROJECTS, and that work was performed at the instance and request of the
20 EMPLOYER, ORTIZ and/or the CITY.

21 58. EMPLOYER failed to remit all MONTHLY CONTRIBUTIONS due by
22 it to the TRUST FUNDS for all work covered under the AGREEMENTS performed
23 by the LABORERS, in addition to travel time to and from the ORTIZ PROJECTS and
24 to EMPLOYER'S place of business which is part of their compensation for work
25 performed on the ORTIZ PROJECTS if said LABORERS were required to report to
26 EMPLOYER'S place of business prior to traveling to the site of said Projects.

27 59. Plaintiff is authorized to proceed with a claims on the ORTIZ
28 PROJECTS pursuant to Civ. Code §§ 8024 and 9100 on behalf of the TRUST

1 FUNDS and LABORERS, as having standing under applicable law to maintain a
2 direct action for the MONTHLY CONTRIBUTIONS. As a "laborer" defined in Civil
3 Code § 8024, Plaintiff, the TRUST FUNDS and LABORERS are not subject to the
4 requirement to give a preliminary 20-day notice under Civ. Code § 9300.

5 60. Pursuant to Cal. Civ. Code § 9550, a labor and material payment bonds
6 were obtained by ORTIZ on the ORTIZ PROJECTS and were issued by FIDELITY
7 and/or DOE 1 through DOE 5 ("collectively "PAYMENT BOND SURETIES") as
8 follows:

9 A. On the BLACK MOUNTAIN PROJECT, bond number 1677178
10 as well as any other labor and material payment bond on the BLACK
11 MOUNTAIN PROJECT, ("BLACK MOUNTAIN BONDS") naming ORTIZ
12 as the principal and the CITY as the obligee;

13 B. On the AC WATER PROJECT, bond number 0703334, as well as
14 any other labor and material payment bond on the AC WATER PROJECT,
15 ("AC WATER BONDS") naming ORTIZ as the principal and the CITY as the
16 obligee;

17 C. On the SEWER & WATER PROJECT, bond number 0703335, as
18 well as any additional labor and material payment bonds on the SEWER &
19 WATER PROJECT ("SEWER & WATER BONDS") naming ORTIZ as the
20 principal and the CITY as the obligee.

21 The BLACK MOUNTAIN BONDS, AC WATER BONDS and SEWER &
22 WATER BONDS will collectively hereinafter be referred to as "PAYMENT
23 BONDS."

24 61. The LABORERS listed on Exhibits "1" , "2" and "3" are persons
25 described in Cal. Civ. Code §§ 8024 and 9100 to whom the PAYMENT BONDS
26 issued by FIDELITY and the PAYMENT BOND SURETIES inure to the benefit of,
27 as required by Cal. Civ. Code § 9554(c). The TRUST FUNDS are entitled to seek
28 that portion of the compensation of the LABORERS to be paid in the form of

1 MONTHLY CONTRIBUTIONS on the PAYMENT BONDS, and thus, persons
2 described in Cal. Civ. Code §§ 8024 and 9100, to whom the PAYMENT BONDS
3 inure to the benefit of, as required by Cal. Civ. Code § 9554(c).

4 62. Although Plaintiff and the TRUST FUNDS are not required to file a
5 preliminary notice, (1) on or about August 29, 2018, Plaintiff sent a claim to
6 FIDELITY through its agent, Stewart Surety & Insurance Services, Inc., and to
7 ORTIZ on the BLACK MOUNTAIN PROJECT and BLACK MOUNTAIN BONDS
8 relating to work performed by the LABORERS listed on Exhibits "1" covering the
9 period from March 2018 to April 2018; (2) on or about August 29, 2018, Plaintiff
10 sent a claim to FIDELITY on the AC WATER PROJECT and AC WATER BONDS
11 relating to work performed by the LABORERS listed on Exhibit "2" covering the
12 period from April 2018 to May 2018; and (3) on or about August 29, 2018, Plaintiff
13 sent a claim to FIDELITY on the SEWER & WATER PROJECT and SEWER &
14 WATER BONDS relating to work performed by the LABORERS listed on Exhibit
15 "3" covering the periods from May 2018 to June 2018.

16 63. The claims by the Plaintiff on each of the ORTIZ PROJECTS and
17 PAYMENT BONDS total \$7,292.30 as follows: (1) on the BLACK MOUNTAIN
18 PROJECT the sum of \$4,803.34; (2) on the AC WATER PROJECT the sum of
19 \$1,366.10; and (3) on the SEWER & WATER PROJECT, the sum of \$1,122.86, plus
20 additional accrued interest on each claim after August 31, 2018 at the TRUST
21 FUNDS' plan rate(s) currently 7.75% per annum.

22 64. Plaintiff brings this action to enforce the claim against FIDELITY and
23 PAYMENT BOND SURETIES on the PAYMENT BONDS pursuant to Cal. Civ.
24 Code §§ 8024, 9100, 9558.

25 65. Pursuant to Cal. Civ. Code §§ 9554 and 9564, Plaintiff is entitled to
26 attorney's fees and costs in bringing this action to recover their claim against the
27 PAYMENT BONDS. In addition, Plaintiff is entitled to recover 30 days extra
28 compensation, at the contribution rates for LABORERS on each of the ORTIZ

1 PROJECTS as a penalty under Cal. Labor Code § 203.5.

2 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

3
4 **FOR PLAINTIFF'S FIRST CLAIM FOR RELIEF**

5 1. For the sum of \$32,173.64, or according to proof, for delinquent fringe
6 benefit MONTHLY CONTRIBUTIONS pursuant to the AGREEMENTS and 29
7 U.S.C. § 1132(g)(2)(A);

8 2. Interest on the delinquent MONTHLY CONTRIBUTIONS, in the
9 amount of \$829.12 through October 18, 2018, or as subject to proof, as required by
10 the AGREEMENTS and pursuant to 29 U.S.C. § 1132(g)(2)(B), plus additional
11 accrued interest at the plan rate(s);

12 3. For liquidated damages in the sum of \$15,716.14, or as subject to proof,
13 as required by the AGREEMENTS and 29 U.S.C. § 1132(g)(2)(C);

14 4. For a total of \$49,998.90 less a credit of \$4,000.00 for a total claim of
15 \$45,998.90 plus additional amounts for MONTHLY CONTRIBUTIONS, liquidated
16 damages, subcontracting violations, audit fees and interest at the plan rate(s)
17 according to proof at the time of trial or other hearing.

18 5. For reasonable attorney fees and costs of suit as required by the
19 AGREEMENTS and 29 U.S.C. § 1132(g)(2)(D);

20 6. For Plaintiff's costs of audit in the sum of \$1,280.00 and subject to proof,
21 in accordance with the AGREEMENTS and 29 U.S.C. § 1132(g)(2)(E);

22 7. For such other and further relief as the Court deems proper.

23
24 **FOR PLAINTIFF'S SECOND CLAIM FOR RELIEF**

25 1. For unpaid MONTHLY CONTRIBUTIONS according to proof, owed by
26 EMPLOYER and an accounting of all assets of the TRUST FUNDS which have not
27 been turned over to the TRUST FUNDS, and any profits derived by EMPLOYER
28 and/or F&L MARQUEZ therefrom;

1 2. For personal liability of EMPLOYER and F&L MARQUEZ for their
2 breaches of fiduciary duty, pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a);

3 3. For reasonable attorneys' fees and costs of suit pursuant to the 502(g)(1)
4 of ERISA, 29 U.S.C. § 1132(g)(1); and

5 4. For such other and further relief as the Court deems proper and just,
6 pursuant to ERISA §§ 409(a) and 502(a)(2), 29 U.S.C. §§ 1109(a) and 1132(a)(2).

7
8 **FOR PLAINTIFF'S THIRD CLAIM FOR RELIEF**

9 1. That this Court issue the following preliminary and permanent
10 prohibitory and mandatory injunctions against EMPLOYER, and its managing
11 officers, including F&L MARQUEZ, its agents, managing employees, successors,
12 assigns, and all those in active concert or participation with EMPLOYER:

13 1.1. That EMPLOYER be ordered to deliver the following, or cause to
14 be delivered, to the TRUST FUNDS' offices no later than 4:30 p.m., on the 20th day
15 of each month for the duration of the AGREEMENTS:

16 1.2. A complete, truthful and accurate "Employers Monthly Report to
17 Trustees" covering all employees which EMPLOYER employed who were covered by
18 the AGREEMENTS commencing with EMPLOYER'S April 2017 report;

19 1.3. An affidavit or declaration from a responsible officer of
20 EMPLOYER and/or ARRIGHI attesting from his or her own personal knowledge
21 under pain of perjury to the completeness, truthfulness and accuracy of the Employers
22 Monthly Report to the Trustees; and

23 1.4. A cashier's check made payable to the Southern California
24 Laborers Trust Funds for the full amount of the MONTHLY CONTRIBUTIONS due
25 on Employers Monthly Reports for each account for which a report is to be submitted.

26 2. For reasonable attorney's fees;

27 3. For costs of suit herein; and

28 4. For such other and further relief as the Court deems proper and just.

FOR PLAINTIFF'S FOURTH CLAIM FOR RELIEF

1
2 1. For recovery against ORTIZ, and FIDELITY and PAYMENT BOND
3 SURETIES on the PAYMENT BONDS on the ORTIZ PROJECTS pursuant to Cal.
4 Civ. Code §§ 9550, 9554 & 9564; Cal. Civ. Proc. Code §§ 996.410, 996.430 and
5 996.440;

6 2. For the sum of \$4,803.34 in unpaid compensation in the form of
7 MONTHLY CONTRIBUTIONS and interest guaranteed by the BLACK
8 MOUNTAIN BONDS for work performed by LABORERS on the BLACK
9 MOUNTAIN PROJECT plus additional accrued interest after August 31, 2018
10 pursuant to Cal. Labor Code § 218.6, Cal. Civ. Code § 3287 or the TRUST FUNDS'
11 plan rate(s), whichever is greater, plus any additional amounts and accrued interest
12 that may be determined at the time of trial or other hearing;

13 3. For the sum of \$1,366.10 in unpaid compensation in the form of
14 MONTHLY CONTRIBUTIONS and interest guaranteed by the AC WATER BONDS
15 for work performed by LABORERS on the AC WATER PROJECT, including
16 interest through August 31, 2018, plus additional accrued interest thereafter
17 pursuant to Cal. Labor Code § 218.6, Cal. Civ. Code § 3287 or the TRUST FUNDS'
18 plan rate(s), whichever is greater, plus any additional amounts plus accrued interest
19 that may be determined at the time of trial or other hearing;

20 4. For the sum of \$1,22.86 in unpaid compensation in the form of
21 MONTHLY CONTRIBUTIONS guaranteed by the SEWER & WATER BONDS for
22 work performed by LABORERS on the SEWER & WATER PROJECT, including
23 interest through August 31, 2018, plus additional accrued interest thereafter
24 pursuant to Cal. Labor Code § 218.6, Cal. Civ. Code § 3287 or the TRUST FUNDS'
25 plan rate(s), whichever is greater, plus any additional amounts plus accrued interest
26 that may be determined at the time of trial or other hearing;

27 5. For reasonable attorney fees and costs, pursuant to Cal. Civ. Code §§
28 9554 and 9564 from the PAYMENT BONDS on each of the ORTIZ PROJECTS;

1 6. For 30 days extra compensation, at the contribution rates for
2 LABORERS on each of the ORTIZ PROJECTS as a penalty under Cal. Labor Code
3 § 203.5; and

4 7. For such other and further relief that the Court deems just and proper.

5
6 DATED: November 20, 2018

REICH, ADELL & CVITAN
A Professional Law Corporation

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8
9 By: /s/ Marsha M. Hamasaki
10 MARSHA M. HAMASAKI
11 Attorneys for Plaintiff
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